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This opinion is, accordingly, entirely consistent with these cases which hold that each independent contributor to the pollution of a stream is liable only for the damages caused by the deposits made by him, and is not liable at all in an action for damages where his contribution alone would not have hurt the plaintiff.² The extreme case, suggested by an English judge, of two chemicals, each in itself harmless, but uniting to form an injurious substance, enforces the view that independent contributors should not be held liable for damages.³ An injunction should, however, be granted by a court of equity, where the plaintiff shows injury, even in such a case.⁴

Clearness will probably be preserved in the treatment of such questions by drawing a line between cases of nuisance or injuries arising from the exercise of property rights and cases of negligent or wilful acts. Where the defendants are each guilty of negligence or wilful breach of duty and their acts, though independent, cause damage to the plaintiff, he may charge both with negligence and recover from either the entire damages.⁵ The law will not attempt to apportion the results of a wilful or negligent wrong between the defendants. The criminal law proceeds upon similar principles with reference to several independent contributors to the death of a person by criminal act.⁶ The logical absurdity involved in the idea that two men acting without concert can each be guilty of killing a third was recognized by the Roman lawyers, but one of them, Julian, explains it thus: "Many rules which cannot be logically deduced are recognized by the civil law for the sake of common utility."⁷

H. C. K.

WATERS: PRESCRIPTIVE RIGHT MEASURED BY USE.—If one diverts water from a river and continues such diversion for five years, does he get the right as against lower riparian proprietors to the use of the amount of water actually taken by him, or does he get a right only to the use of so much as was reasonably required to irrigate the lands on which he used it?

² Notes in 40 L. R. A. N. S. 102 and 24 L. R. A. N. S. 1185.

³ Kay, J., in *Blair v. Deakin*, 57 L. T. N. S. 522.

⁴ This distinction is clearly established in the California cases upon this subject. *Montecito Valley Co. v. Santa Barbara*, (1904) 144 Cal. 578, 595, 77 Pac. 1113; *Miller v. Highland Ditch Co.*, (1891) 87 Cal. 430, 25 Pac. 550; *People v. Gold Run Ditch & M. Co.*, (1884) 66 Cal. 139, 149; 4 Pac. 1152; *Hillman v. Newington*, (1890) 57 Cal. 56. The case of *Keyes v. Little York G. W. and Water Co.*, (1879) 53 Cal. 724 may be regarded as overruled.

⁵ *Cole v. Roebling Construction Co.*, (1909) 156 Cal. 443, 447, 105 Pac. 255; *Spear v. United Railroads*, (1911) 16 Cal. App. 637, 658, 117 P. 956.

⁶ *Bennett v. Commonwealth*, (1912) 150 Ky. 604, 150 S. W. 806, 43 L. R. A. N. S. 419; *People v. Lewis*, (1899) 124 Cal. 551, 57 Pac. 470, 45 L. R. A. 783.

⁷ *Grueber, The Lex Aquilia* p. 167.

California Pastoral and Agricultural Company v. Madera Canal and Irrigation Company¹ decides that a right is acquired only to the use of a reasonable quantity of the water, not to the full amount taken and wasted.

The question could hardly have arisen if our system of jurisprudence possessed a logical and consistent theory of prescription, such as existed in the Roman Law. Because our law on this subject is stated in the form of statutes of limitations, we are inclined to reason, in cases involving questions like the present, that since a right of action accrued for the unlawful taking more than five years ago, it is now barred by mere lapse of time. It is true that such lapse of time extinguishes the remedy in the cases of torts and contracts. But it is not true where the acquisition of title is concerned. There the important matter is the possession or use by the person claiming title. In other words, mere lapse of time never bars titles, unless accompanied by adverse possession or use. The only question, therefore, as the Supreme Court holds, should have been what was the extent of the defendant's use for more than five years?²

Though there are some material differences between the easement of light and the easement of diverting water from a stream, it is interesting to note that the English House of Lords finally held, after much difference of opinion on the part of inferior tribunals, that an easement of light by prescription was measured, not by the light actually enjoyed for the prescriptive period, but by the extent reasonably required for the building in respect to which the easement was claimed.³

O. K. M.

WATER AND WATER COURSES: IRRIGATION STATUTES.—In 1905, North Dakota, South Dakota and Oklahoma, and in 1907, New Mexico, adopted "irrigation codes" which are practically copies of the so-called "Bien Code," which was prepared by Mr. Morris Bien of the United States Reclamation Service, and which is based principally on statutes adopted by Idaho and Utah in 1903. The code has recently been before the Supreme Courts of New Mexico¹ and South Dakota.²

The New Mexico case deals with a statutory provision³ necessitating the approval of the State Engineer before making a change in the point of diversion of a canal. It is held that

¹ (Jan. 15, 1914) 47 Cal. Dec. 116.

² Langdell, Equity Pleading, Secs. 120-125.

³ Colls v. Home and Colonial Stores, Limited, (1904) A. C. 179.

¹ Pueblo of Isleta v. Tondee, (1913) 137 Pac. 86 (New Mexico).

² St. Germain Irrigating Co. v. Hawthorne Ditch Co., (1913) 143 N. W. 124 (S. Dak.)

³ Chap. 49, New Mexico Laws of 1907, Sec. 45.